

SENATE AMENDMENTS

2nd Printing

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H.B. No. 2174

A BILL TO BE ENTITLED

AN ACT

relating to controlled substance prescriptions and reimbursement for treatment for certain substance use disorders; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 552.118, Government Code, is amended to read as follows:

Sec. 552.118. EXCEPTION: CONFIDENTIALITY OF OFFICIAL PRESCRIPTION PROGRAM INFORMATION. Information is excepted from the requirements of Section 552.021 if it is:

(1) information on or derived from an official prescription form filed with the Texas State Board of Pharmacy under Section 481.0755, Health and Safety Code, or an electronic prescription record filed with the Texas State Board of Pharmacy under Section 481.075, Health and Safety Code; or

(2) other information collected under Section 481.075 or 481.0755 of that code.

SECTION 2. Sections 481.002(10) and (47), Health and Safety Code, are amended to read as follows:

(10) "Designated agent" means an individual designated under Section 481.074(b-2) [~~481.073~~] to communicate a practitioner's instructions to a pharmacist in an emergency.

(47) "Official prescription form" means a prescription form that is used for a Schedule II controlled

1 substance under Section 481.0755 and contains the prescription
2 information required by Section 481.0755(e) [~~481.075~~].

3 SECTION 3. Section 481.003(a), Health and Safety Code, is
4 amended to read as follows:

5 (a) The director may adopt rules to administer and enforce
6 this chapter, other than Sections [~~481.073,~~] 481.074, 481.075,
7 481.0755, 481.0756, 481.076, 481.0761, 481.0762, 481.0763,
8 481.07635, 481.07636, 481.0764, 481.0765, and 481.0766. The board
9 may adopt rules to administer Sections [~~481.073,~~] 481.074, 481.075,
10 481.0755, 481.0756, 481.076, 481.0761, 481.0762, 481.0763,
11 481.07635, 481.07636, 481.0764, 481.0765, and 481.0766.

12 SECTION 4. Section 481.074, Health and Safety Code, is
13 amended by amending Subsections (b), (c), (e), (f), (g), (h), (k),
14 and (q) and adding Subsections (b-1) and (b-2) to read as follows:

15 (b) Except in an emergency as defined by board rule under
16 Subsection (b-1) [~~of the board~~] or as otherwise provided by
17 [~~Subsection (e) or~~] Section 481.075(j) or (m) or 481.0755, a person
18 may not dispense or administer a controlled substance [~~listed in~~
19 ~~Schedule II without a written prescription of a practitioner on an~~
20 ~~official prescription form or~~] without an electronic prescription
21 that meets the requirements of and is completed by the practitioner
22 in accordance with Section 481.075.

23 (b-1) In an emergency as defined by board rule, a person may
24 dispense or administer a controlled substance [~~listed in Schedule~~
25 ~~II~~] on the oral or telephonically communicated prescription of a
26 practitioner. The person who administers or dispenses the
27 substance shall:

1 (1) if the person is a prescribing practitioner or a
2 pharmacist, promptly comply with Subsection (c); or

3 (2) if the person is not a prescribing practitioner or
4 a pharmacist, promptly write the oral or telephonically
5 communicated prescription and include in the written record of the
6 prescription the name, address, and Federal Drug Enforcement
7 Administration number issued for prescribing a controlled
8 substance in this state of the prescribing practitioner, all
9 information required to be provided by a practitioner under Section
10 481.075(e)(1), and all information required to be provided by a
11 dispensing pharmacist under Section 481.075(e)(2).

12 (b-2) In an emergency described by Subsection (b-1), an
13 agent designated in writing by a practitioner defined by Section
14 481.002(39)(A) may communicate a prescription by telephone. A
15 practitioner who designates a different agent shall designate that
16 agent in writing and maintain the designation in the same manner in
17 which the practitioner initially designated an agent under this
18 subsection. On the request of a pharmacist, a practitioner shall
19 furnish a copy of the written designation. This subsection does not
20 relieve a practitioner or the practitioner's designated agent from
21 the requirement of Subchapter A, Chapter 562, Occupations Code. A
22 practitioner is personally responsible for the actions of the
23 designated agent in communicating a prescription to a pharmacist.

24 (c) Not later than the seventh day after the date a
25 prescribing practitioner authorizes an emergency oral or
26 telephonically communicated prescription, the prescribing
27 practitioner shall cause an ~~[a written or]~~ electronic prescription,

1 completed in the manner required by Section 481.075, to be
2 delivered to the dispensing pharmacist at the pharmacy where the
3 prescription was dispensed. ~~[A written prescription may be
4 delivered in person or by mail. The envelope of a prescription
5 delivered by mail must be postmarked not later than the seventh day
6 after the date the prescription was authorized. On receipt of a
7 written prescription, the dispensing pharmacy shall file the
8 transcription of the telephonically communicated prescription and
9 the pharmacy copy and shall send information to the board as
10 required by Section 481.075.]~~ On receipt of the ~~[an]~~ electronic
11 prescription, the pharmacist shall annotate the electronic
12 prescription record with the original authorization and date of the
13 emergency oral or telephonically communicated prescription.

14 (e) The partial filling of a prescription for a controlled
15 substance listed in Schedule II is permissible in accordance with
16 applicable federal law~~[, if the pharmacist is unable to supply the
17 full quantity called for in a written or electronic prescription or
18 emergency oral prescription and the pharmacist makes a notation of
19 the quantity supplied on the face of the written prescription, on
20 the written record of the emergency oral prescription, or in the
21 electronic prescription record. The remaining portion of the
22 prescription may be filled within 72 hours of the first partial
23 filling, however, if the remaining portion is not or cannot be
24 filled within the 72-hour period, the pharmacist shall so notify
25 the prescribing individual practitioner. No further quantity may
26 be supplied beyond 72 hours without a new prescription].~~

27 (f) A prescription for a Schedule II controlled substance

1 for a patient in a long-term care facility (LTCF) or for a hospice
2 patient with a medical diagnosis documenting a terminal illness may
3 be filled in partial quantities to include individual dosage units.
4 If there is any question about whether a hospice patient may be
5 classified as having a terminal illness, the pharmacist must
6 contact the practitioner before partially filling the
7 prescription. Both the pharmacist and the practitioner have a
8 corresponding responsibility to assure that the controlled
9 substance is for a terminally ill hospice patient. The pharmacist
10 must record the prescription [~~on an official prescription form or~~]
11 in the electronic prescription record and must indicate [~~on the~~
12 ~~official prescription form or~~] in the electronic prescription
13 record whether the patient is a "terminally ill hospice patient" or
14 an "LTCF patient." A prescription that is partially filled and does
15 not contain the notation "terminally ill hospice patient" or "LTCF
16 patient" is considered to have been filled in violation of this
17 chapter. For each partial filling, the dispensing pharmacist shall
18 record [~~on the back of the official prescription form or~~] in the
19 electronic prescription record the date of the partial filling, the
20 quantity dispensed, the remaining quantity authorized to be
21 dispensed, and the identification of the dispensing pharmacist.
22 Before any subsequent partial filling, the pharmacist must
23 determine that the additional partial filling is necessary. The
24 total quantity of Schedule II controlled substances dispensed in
25 all partial fillings may not exceed the total quantity prescribed.
26 Schedule II prescriptions for patients in a long-term care facility
27 or hospice patients with a medical diagnosis documenting a terminal

1 illness are valid for a period not to exceed 60 days following the
2 issue date unless sooner terminated by discontinuance of the
3 medication.

4 (g) A person may not dispense a controlled substance in
5 Schedule III or IV that is a prescription drug under the Federal
6 Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without
7 a ~~[written, electronic, oral, or telephonically communicated]~~
8 prescription of a practitioner defined by Section 481.002(39)(A) or
9 (D), except that the practitioner may dispense the substance
10 directly to an ultimate user. A prescription for a controlled
11 substance listed in Schedule III or IV may not be filled or refilled
12 later than six months after the date on which the prescription is
13 issued and may not be refilled more than five times, unless the
14 prescription is renewed by the practitioner. A prescription under
15 this subsection must comply with other applicable state and federal
16 laws.

17 (h) A pharmacist may dispense a controlled substance listed
18 in Schedule III, IV, or V under a ~~[written, electronic, oral, or~~
19 ~~telephonically communicated]~~ prescription issued by a practitioner
20 defined by Section 481.002(39)(C) ~~[and]~~ only if the pharmacist
21 determines that the prescription was issued for a valid medical
22 purpose and in the course of professional practice. A prescription
23 described by ~~[issued under]~~ this subsection may not be filled or
24 refilled later than six months after the date the prescription is
25 issued and may not be refilled more than five times, unless the
26 prescription is renewed by the practitioner.

27 (k) A prescription for a controlled substance must show:

(1) the quantity of the substance prescribed:

(A) ~~[numerically, followed by the number written as a word, if the prescription is written,~~

~~[(B)]~~ numerically, if the prescription is electronic; or

(B) ~~[(C)]~~ if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(2) the date of issue;

(2-a) if the prescription is issued for a Schedule II controlled substance to be filled at a later date under Subsection (d-1), the earliest date on which a pharmacy may fill the prescription;

(3) the name, address, and date of birth or age of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(4) the name and strength of the controlled substance prescribed;

(5) the directions for use of the controlled substance;

(6) the intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(7) the name, address, Federal Drug Enforcement Administration number, and telephone number of the practitioner at the practitioner's usual place of business~~[, which must be legibly~~

1 ~~printed or stamped on a written prescription, and~~

2 ~~[(8) if the prescription is handwritten, the signature~~
3 ~~of the prescribing practitioner].~~

4 (q) Each dispensing pharmacist shall send all required
5 information~~[, including any information required to complete the~~
6 ~~Schedule III through V prescription forms,~~] to the board by
7 electronic transfer or another form approved by the board not later
8 than the next business day after the date the prescription is
9 completely filled.

10 SECTION 5. The heading to Section 481.075, Health and
11 Safety Code, is amended to read as follows:

12 Sec. 481.075. SCHEDULE II PRESCRIPTIONS ~~[OFFICIAL~~
13 ~~PRESCRIPTION PROGRAM]~~.

14 SECTION 6. Sections 481.075(a), (e), (g), (h), (i), and
15 (j), Health and Safety Code, are amended to read as follows:

16 (a) A practitioner who prescribes a controlled substance
17 listed in Schedule II shall, except as provided by Section
18 481.074(b-1) or 481.0755 or a rule adopted under Section 481.0761,
19 record the prescription ~~[on an official prescription form or]~~ in an
20 electronic prescription that includes the information required by
21 this section.

22 (e) Each ~~[official prescription form or electronic]~~
23 prescription used to prescribe a Schedule II controlled substance
24 must contain:

25 (1) information provided by the prescribing
26 practitioner, including:

27 (A) the date the prescription is issued;

1 (B) the controlled substance prescribed;
2 (C) the quantity of controlled substance
3 prescribed, shown[÷
4 [~~(i)~~] numerically[, ~~followed by the number~~
5 ~~written as a word, if the prescription is written, or~~
6 [~~(ii)~~ ~~numerically, if the prescription is~~
7 ~~electronic~~];
8 (D) the intended use of the controlled substance,
9 or the diagnosis for which the controlled substance [~~it~~] is
10 prescribed, and the instructions for use of the substance;
11 (E) the practitioner's name, address, and
12 Federal Drug Enforcement Administration number issued for
13 prescribing a controlled substance in this state;
14 (F) the name, address, and date of birth or age of
15 the person for whom the controlled substance is prescribed; and
16 (G) if the prescription is issued to be filled at
17 a later date under Section 481.074(d-1), the earliest date on which
18 a pharmacy may fill the prescription;
19 (2) information provided by the dispensing
20 pharmacist, including the date the prescription is filled; and
21 (3) [~~for a written prescription, the signatures of the~~
22 ~~prescribing practitioner and the dispensing pharmacist or for an~~
23 ~~electronic prescription,~~] the prescribing practitioner's
24 electronic signature or other secure method of validation
25 authorized by federal law.
26 (g) Except for an emergency oral or telephonically
27 communicated prescription described by [~~prescribed under~~] Section

1 481.074(b-1) [~~481.074(b)~~], the prescribing practitioner shall:

2 (1) record [~~legibly fill in,~~] or direct a designated
3 agent to record [~~legibly fill in, on the official prescription form~~
4 ~~or~~] in the electronic prescription[~~7~~] each item of information
5 required to be provided by the prescribing practitioner under
6 Subsection (e)(1), unless the practitioner determines that:

7 (A) under rule adopted by the board for this
8 purpose, it is unnecessary for the practitioner or the
9 practitioner's agent to provide the patient identification number;
10 or

11 (B) it is not in the best interest of the patient
12 for the practitioner or practitioner's agent to provide information
13 regarding the intended use of the controlled substance or the
14 diagnosis for which it is prescribed; and

15 (2) [~~sign the official prescription form and give the~~
16 ~~form to the person authorized to receive the prescription or, in the~~
17 ~~case of an electronic prescription,~~] electronically sign or
18 validate the electronic prescription as authorized by federal law
19 and transmit the prescription to the dispensing pharmacy.

20 (h) In the case of an emergency oral or telephonically
21 communicated prescription described by [~~prescribed under~~] Section
22 481.074(b-1) [~~481.074(b)~~], the prescribing practitioner shall give
23 the dispensing pharmacy the information needed to complete the
24 [~~official prescription form or~~] electronic prescription record.

25 (i) Each dispensing pharmacist shall:

26 (1) [~~fill in on the official prescription form or~~]
27 note in the electronic prescription record each item of information

given orally to the dispensing pharmacy under Subsection (h) and the date the prescription is filled~~[7]~~ and~~+~~

~~[(A) for a written prescription, fill in the dispensing pharmacist's signature, or~~

~~[(B) for an electronic prescription,]~~
appropriately record the identity of the dispensing pharmacist in the electronic prescription record;

(2) retain with the records of the pharmacy for at least two years:

(A) ~~[the official prescription form or]~~ the electronic prescription record~~[, as applicable]~~; and

(B) the name or other patient identification required by Section 481.074(m) or (n); and

(3) send all required information, including any information required to complete an ~~[official prescription form or]~~ electronic prescription record, to the board by electronic transfer or another form approved by the board not later than the next business day after the date the prescription is completely filled.

(j) A medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled is not required to be recorded ~~[on an official prescription form or]~~ in an electronic prescription record that meets the requirements of this section.

SECTION 7. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.0755 and 481.0756 to read as follows:

Sec. 481.0755. WRITTEN, ORAL, AND TELEPHONICALLY

1 COMMUNICATED PRESCRIPTIONS. (a) Notwithstanding Sections 481.074
2 and 481.075, a prescription for a controlled substance is not
3 required to be issued electronically and may be issued in writing if
4 the prescription is issued:

5 (1) by a veterinarian;

6 (2) in circumstances in which electronic prescribing
7 is not available due to temporary technological or electronic
8 failure, as prescribed by board rule;

9 (3) by a practitioner to be dispensed by a pharmacy
10 located outside this state, as prescribed by board rule;

11 (4) when the prescriber and dispenser are in the same
12 location or under the same license;

13 (5) in circumstances in which necessary elements are
14 not supported by the most recently implemented national data
15 standard that facilitates electronic prescribing;

16 (6) for a drug for which the United States Food and
17 Drug Administration requires additional information in the
18 prescription that is not possible with electronic prescribing;

19 (7) for a non-patient-specific prescription pursuant
20 to a standing order, approved protocol for drug therapy,
21 collaborative drug management, or comprehensive medication
22 management, in response to a public health emergency or in other
23 circumstances in which the practitioner may issue a
24 non-patient-specific prescription;

25 (8) for a drug under a research protocol;

26 (9) by a practitioner who has received a waiver under
27 Section 481.0756 from the requirement to use electronic

1 prescribing;

2 (10) under circumstances in which the practitioner has
3 the present ability to submit an electronic prescription but
4 reasonably determines that it would be impractical for the patient
5 to obtain the drugs prescribed under the electronic prescription in
6 a timely manner and that a delay would adversely impact the
7 patient's medical condition; or

8 (11) before January 1, 2021.

9 (b) A dispensing pharmacist who receives a controlled
10 substance prescription in a manner other than electronically is not
11 required to verify that the prescription is exempt from the
12 requirement that it be submitted electronically. The pharmacist
13 may dispense a controlled substance pursuant to an otherwise valid
14 written, oral, or telephonically communicated prescription
15 consistent with the requirements of this subchapter.

16 (c) Except in an emergency, a practitioner must use a
17 written prescription to submit a prescription described by
18 Subsection (a). In an emergency, the practitioner may submit an
19 oral or telephonically communicated prescription as authorized
20 under Section 481.074(b-1).

21 (d) A written prescription for a controlled substance other
22 than a Schedule II controlled substance must include the
23 information required under Section 481.074(k) and the signature of
24 the prescribing practitioner.

25 (e) A written prescription for a Schedule II controlled
26 substance must be on an official prescription form and include the
27 information required for an electronic prescription under Section

1 481.075(e), the signature of the practitioner, and the signature of
2 the dispensing pharmacist after the prescription is filled.

3 (f) The board by rule shall authorize a practitioner to
4 determine whether it is necessary to obtain a particular patient
5 identification number and to provide that number on the official
6 prescription form.

7 (g) On request of a practitioner, the board shall issue
8 official prescription forms to the practitioner for a fee covering
9 the actual cost of printing, processing, and mailing the forms.
10 Before mailing or otherwise delivering prescription forms to a
11 practitioner, the board shall print on each form the number of the
12 form and any other information the board determines is necessary.

13 (h) Each official prescription form must be sequentially
14 numbered.

15 (i) A person may not obtain an official prescription form
16 unless the person is a practitioner as defined by Section
17 481.002(39)(A) or an institutional practitioner.

18 (j) Not more than one Schedule II prescription may be
19 recorded on an official prescription form.

20 (k) Not later than the 30th day after the date a
21 practitioner's Federal Drug Enforcement Administration number or
22 license to practice has been denied, suspended, canceled,
23 surrendered, or revoked, the practitioner shall return to the board
24 all official prescription forms in the practitioner's possession
25 that have not been used for prescriptions.

26 (l) Each prescribing practitioner:

27 (1) may use an official prescription form only to

1 submit a prescription described by Subsection (a);

2 (2) shall date or sign an official prescription form
3 only on the date the prescription is issued; and

4 (3) shall take reasonable precautionary measures to
5 ensure that an official prescription form issued to the
6 practitioner is not used by another person to violate this
7 subchapter or a rule adopted under this subchapter.

8 (m) In the case of an emergency oral or telephonically
9 communicated prescription described by Section 481.074(b-1), the
10 prescribing practitioner shall give the dispensing pharmacy the
11 information needed to complete the official prescription form if
12 the pharmacy is not required to use the electronic prescription
13 record.

14 (n) Each dispensing pharmacist receiving an oral or
15 telephonically communicated prescription under Subsection (m)
16 shall:

17 (1) fill in on the official prescription form each
18 item of information given orally to the dispensing pharmacy under
19 Subsection (m) and the date the prescription is filled and fill in
20 the dispensing pharmacist's signature;

21 (2) retain with the records of the pharmacy for at
22 least two years:

23 (A) the official prescription form; and

24 (B) the name or other patient identification
25 required by Section 481.074(m) or (n); and

26 (3) send all required information, including any
27 information required to complete an official prescription form, to

1 the board by electronic transfer or another form approved by the
2 board not later than the next business day after the date the
3 prescription is completely filled.

4 Sec. 481.0756. WAIVERS FROM ELECTRONIC PRESCRIBING. (a)
5 The appropriate regulatory agency that issued the license,
6 certification, or registration to a prescriber is authorized to
7 grant a prescriber a waiver from the electronic prescribing
8 requirement under the provisions of this section.

9 (b) The board shall convene an interagency workgroup that
10 includes representatives of each regulatory agency that issues a
11 license, certification, or registration to a prescriber.

12 (c) The work group described by Subsection (b) shall
13 establish recommendations and standards for circumstances in which
14 a waiver from the electronic prescribing requirement is appropriate
15 and a process under which a prescriber may request and receive a
16 waiver.

17 (d) The board shall adopt rules establishing the
18 eligibility for a waiver, including:

19 (1) economic hardship;
20 (2) technological limitations not reasonably within
21 the control of the prescriber; or

22 (3) other exceptional circumstances demonstrated by
23 the prescriber.

24 (e) Each regulatory agency that issues a license,
25 certification, or registration to a prescriber shall adopt rules
26 for the granting of waivers consistent with the board rules adopted
27 under Subsection (d).

1 (f) A waiver may be issued to a prescriber for a period of
2 one year. A prescriber may reapply for a subsequent waiver not
3 earlier than the 30th day before the date the waiver expires if the
4 circumstances that necessitated the waiver continue.

5 SECTION 8. Sections 481.0761(c) and (d), Health and Safety
6 Code, are amended to read as follows:

7 (c) The board by rule may:

8 (1) ~~[permit more than one prescription to be~~
9 ~~administered or dispensed and recorded on one prescription form for~~
10 ~~a Schedule III through V controlled substance;~~

11 [(1-a)] establish a procedure for the issuance of
12 multiple prescriptions of a Schedule II controlled substance under
13 Section 481.074(d-1);

14 (2) remove from or return to the official prescription
15 program any aspect of a practitioner's or pharmacist's hospital
16 practice, including administering or dispensing;

17 (3) waive or delay any requirement relating to the
18 time or manner of reporting;

19 (4) establish compatibility protocols for electronic
20 data transfer hardware, software, or format, including any
21 necessary modifications for participation in a database described
22 by Section 481.076(j);

23 (5) establish a procedure to control the release of
24 information under Sections 481.074, 481.075, and 481.076; and

25 (6) establish a minimum level of prescription activity
26 below which a reporting activity may be modified or deleted.

27 (d) The board by rule shall authorize a practitioner to

determine whether it is necessary to obtain a particular patient identification number and to provide that number [~~on the official prescription form or~~] in the electronic prescription record.

SECTION 9. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Sections 481.07635 and 481.07636 to read as follows:

Sec. 481.07635. CONTINUING EDUCATION. (a) A person authorized to receive information under Section 481.076(a)(5) shall, not later than the first anniversary after the person is issued a license, certification, or registration to prescribe or dispense controlled substances under this chapter, complete two hours of professional education related to approved procedures of prescribing and monitoring controlled substances.

(b) A person authorized to receive information may annually take the professional education course under this section to fulfil hours toward the ethics education requirement of the person's license, certification, or registration.

(c) The regulatory agency that issued the license, certification, or registration to a person authorized to receive information under Section 481.076(a)(5) shall approve professional education to satisfy the requirements of this section.

Sec. 481.07636. OPIOID PRESCRIPTION LIMITS. (a) In this section, "acute pain" means the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited. The term does not include:

(1) chronic pain;

(2) pain being treated as part of cancer care;

1 (3) pain being treated as part of hospice or other
2 end-of-life care; or

3 (4) pain being treated as part of palliative care.

4 (b) For the treatment of acute pain, a practitioner may not:

5 (1) issue a prescription for an opioid in an amount
6 that exceeds a 10-day supply; or

7 (2) provide for a refill of an opioid.

8 (c) Subsection (b) does not apply to a prescription for an
9 opioid approved by the United States Food and Drug Administration
10 for the treatment of substance addiction that is issued by a
11 practitioner for the treatment of substance addiction.

12 (d) A dispenser is not subject to criminal, civil, or
13 administrative penalties for dispensing or refusing to dispense a
14 controlled substance under a prescription that exceeds the limits
15 provided by Subsection (b).

16 SECTION 10. Section 481.128(a), Health and Safety Code, is
17 amended to read as follows:

18 (a) A registrant or dispenser commits an offense if the
19 registrant or dispenser knowingly:

20 (1) distributes, delivers, administers, or dispenses
21 a controlled substance in violation of Subchapter C [~~Sections~~
22 ~~481.070-481.075~~];

23 (2) manufactures a controlled substance not
24 authorized by the person's Federal Drug Enforcement Administration
25 registration or distributes or dispenses a controlled substance not
26 authorized by the person's registration to another registrant or
27 other person;

1 (3) refuses or fails to make, keep, or furnish a
2 record, report, notification, order form, statement, invoice, or
3 information required by this chapter;

4 (4) prints, manufactures, possesses, or produces an
5 official prescription form without the approval of the board;

6 (5) delivers or possesses a counterfeit official
7 prescription form;

8 (6) refuses an entry into a premise for an inspection
9 authorized by this chapter;

10 (7) refuses or fails to return an official
11 prescription form as required by Section 481.0755(k) [~~481.075(k)~~];

12 (8) refuses or fails to make, keep, or furnish a
13 record, report, notification, order form, statement, invoice, or
14 information required by a rule adopted by the director or the board;
15 or

16 (9) refuses or fails to maintain security required by
17 this chapter or a rule adopted under this chapter.

18 SECTION 11. Section 481.129(a), Health and Safety Code, is
19 amended to read as follows:

20 (a) A person commits an offense if the person knowingly:

21 (1) distributes as a registrant or dispenser a
22 controlled substance listed in Schedule I or II, unless the person
23 distributes the controlled substance as authorized under the
24 federal Controlled Substances Act (21 U.S.C. Section 801 et seq.);

25 (2) uses in the course of manufacturing, prescribing,
26 or distributing a controlled substance a Federal Drug Enforcement
27 Administration registration number that is fictitious, revoked,

1 suspended, or issued to another person;

2 (3) issues a prescription bearing a forged or
3 fictitious signature;

4 (4) uses a prescription issued to another person to
5 prescribe a Schedule II controlled substance;

6 (5) possesses, obtains, or attempts to possess or
7 obtain a controlled substance or an increased quantity of a
8 controlled substance:

9 (A) by misrepresentation, fraud, forgery,
10 deception, or subterfuge;

11 (B) through use of a fraudulent prescription
12 form; ~~[ex]~~

13 (C) through use of a fraudulent oral or
14 telephonically communicated prescription; or

15 (D) through the use of a fraudulent electronic
16 prescription; or

17 (6) furnishes false or fraudulent material
18 information in or omits material information from an application,
19 report, record, or other document required to be kept or filed under
20 this chapter.

21 SECTION 12. Section 32.024, Human Resources Code, is
22 amended by adding Subsection (z-2) to read as follows:

23 (z-2) The limits on prescription drugs and medications
24 under the medical assistance program provided by Subsections (z)
25 and (z-1) do not apply to a prescription for an opioid for the
26 treatment of acute pain under Section 481.07636, Health and Safety
27 Code.

SECTION 13. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.03115 to read as follows:

Sec. 32.03115. REIMBURSEMENT FOR MEDICATION-ASSISTED TREATMENT FOR OPIOID OR SUBSTANCE USE DISORDER. (a) In this section, "medication-assisted opioid or substance use disorder treatment" means the use of methadone, buprenorphine, oral buprenorphine/naloxone, or naltrexone to treat opioid or substance use disorder.

(b) Notwithstanding Sections 531.072 and 531.073, Government Code, or any other law and subject to Subsections (c) and (d), the commission shall provide medical assistance reimbursement for medication-assisted opioid or substance use disorder treatment without requiring a recipient of medical assistance or health care provider to obtain prior authorization or precertification for the treatment, except as needed to minimize the opportunity for fraud, waste, or abuse.

(c) The duty to provide medical assistance reimbursement for medication-assisted opioid or substance use disorder treatment under Subsection (b) does not apply with respect to:

(1) a prescription for methadone;
(2) a recipient for whom medication-assisted opioid or substance use disorder treatment is determined to be medically contraindicated by the recipient's physician; or

(3) a recipient who is subject to an age-related restriction applicable to medication-assisted opioid or substance use disorder treatment.

(d) The commission may provide medical assistance

1 reimbursement for medication-assisted opioid or substance use
2 disorder treatment only if the treatment is prescribed to a
3 recipient of medical assistance by a licensed health care provider
4 who is authorized to prescribe methadone, buprenorphine, oral
5 buprenorphine/naloxone, or naltrexone.

6 (e) This section expires August 31, 2023.

7 SECTION 14. Section 554.051(a-1), Occupations Code, is
8 amended to read as follows:

9 (a-1) The board may adopt rules to administer Sections
10 ~~[481.073,]~~ 481.074, 481.075, 481.0755, 481.0756, 481.076,
11 481.0761, 481.0762, 481.0763, 481.07635, 481.07636, 481.0764,
12 481.0765, and 481.0766, Health and Safety Code.

13 SECTION 15. Section 565.003, Occupations Code, is amended
14 to read as follows:

15 Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING
16 APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless
17 compliance would violate the pharmacy or drug statutes or rules in
18 the state in which the pharmacy is located, the board may discipline
19 an applicant for or the holder of a nonresident pharmacy license if
20 the board finds that the applicant or license holder has failed to
21 comply with:

22 (1) Section 481.074, ~~[or]~~ 481.075, 481.0755,
23 481.0756, 481.076, 481.0761, 481.0762, 481.0763, 481.07635,
24 481.07636, 481.0764, 481.0765, or 481.0766, Health and Safety Code;

25 (2) Texas substitution requirements regarding:

26 (A) the practitioner's directions concerning
27 generic substitution;

1 (B) the patient's right to refuse generic
2 substitution; or

3 (C) notification to the patient of the patient's
4 right to refuse substitution;

5 (3) any board rule relating to providing drug
6 information to the patient or the patient's agent in written form or
7 by telephone; or

8 (4) any board rule adopted under Section 554.051(a)
9 and determined by the board to be applicable under Section
10 554.051(b).

11 SECTION 16. Sections 481.073, 481.074(o) and (p), and
12 481.075(b), (c), (d), (f), (k), and (l), Health and Safety Code, are
13 repealed.

14 SECTION 17. A person who holds a license, certification, or
15 registration to prescribe or dispense a controlled substance issued
16 before September 1, 2020, is required to take the continuing
17 education course provided by Section 481.07635, Health and Safety
18 Code, as added by this Act, not later than September 1, 2021.

19 SECTION 18. If before implementing any provision of this
20 Act a state agency determines that a waiver or authorization from a
21 federal agency is necessary for implementation of that provision,
22 the agency affected by the provision shall request the waiver or
23 authorization and may delay implementing that provision until the
24 waiver or authorization is granted.

25 SECTION 19. This Act takes effect September 1, 2019.

ADOPTED

MAY 21 2019

Henry S. Paul
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Ryan Whit*

1 Amend H.B. No. 2174 (senate committee printing) by adding the
2 following appropriately numbered SECTION to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION _____. (a) In this section, "qualifying
5 practitioner" has the meaning assigned by 21 U.S.C. Section
6 823(g)(2)(G)(iii).

7 (b) Not later than November 1, 2019, the Health and Human
8 Services Commission shall amend the commission's Medicaid
9 Substance Use Disorder Services Medical Policy and any other
10 provider or claims payment policy or manual necessary to authorize
11 Medicaid medical benefits reimbursement for the prescribing of
12 buprenorphine for the treatment of an opioid use disorder by an
13 advanced practice registered nurse recognized by the Texas Board of
14 Nursing as a clinical nurse specialist, nurse anesthetist, or nurse
15 midwife, provided that the advanced practice registered nurse:

16 (1) is a qualifying practitioner;

17 (2) has obtained a waiver from registration
18 requirements as provided by 21 U.S.C. Section 823(g); and

19 (3) is acting under adequate physician supervision and
20 a physician's delegation under Section 157.0512 or 157.054,
21 Occupations Code.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 22, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2174 by Zerwas (Relating to controlled substance prescriptions and reimbursement for treatment for certain substance use disorders; authorizing a fee.), As Passed 2nd House

Estimated Two-year Net Impact to General Revenue Related Funds for HB2174, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2019
2020	(\$57,360)	\$57,360	1.0
2021	(\$57,360)	\$57,360	1.0
2022	(\$57,360)	\$57,360	1.0
2023	(\$57,360)	\$57,360	1.0
2024	(\$57,360)	\$57,360	1.0

Fiscal Analysis

The bill would amend the Government Code, Health and Safety Code, and Human Resources Code as they relate to controlled substance prescriptions under the Texas Controlled Substances Act.

The provisions of the bill would amend dispensing requirements related to controlled substances to require electronic prescriptions in certain circumstances and authorize written prescriptions and oral or telephonic communication of prescriptions by a prescriber or designated agent in certain circumstances.

The bill would authorize certain regulatory agencies to grant waivers to electronic prescribing of controlled substances for practitioners and would amend continuing education requirements related to opioid prescription limits.

Under the provisions of the bill, the limits on prescription drugs and medications under the medical assistance program would not apply to a prescription for an opioid for initial treatment of acute pain.

The bill would require the Health and Human Services Commission (HHSC) to provide medical assistance reimbursement for certain medication-assisted opioid or substance abuse disorder treatments without requiring prior authorization or precertification and to amend certain policies to authorize Medicaid reimbursement for the prescribing of buprenorphine for the treatment of an opioid use disorder by an advanced practice registered nurse meeting certain Texas Board of Nursing and federal requirements.

The bill would take effect September 1, 2019.

Methodology

Under the provisions of the bill, the Board of Nursing would be authorized to grant waivers to electronic prescribing of controlled substances for practitioners and would be required to amend continuing education requirements related to opioid prescription limits.

The agency indicates that to implement the provisions of the bill, it would develop a process for approving waivers, coordinate with other regulatory agencies to standardize the submission and approval of waivers, and would develop a new continuing education course and process for confirming licensees complete the course within the required time frame.

To implement the provisions of the bill, the Board of Nursing estimates that it would require an additional FTE and a cost of \$57,360 in General Revenue in fiscal year 2020 and each subsequent fiscal year. This analysis assumes that any increased cost to the Board of Nursing, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

This analysis assumes that any system modifications to the vendor drug claims processing system, Claims Administrator and auxiliary technology services, and other technology services at HHSC, could be absorbed within existing agency resources. HHSC indicates that requiring Medicaid reimbursement for medication-assisted opioid or substance use disorder treatment without requiring a prior authorization or pre-certification could result in a loss of supplemental Medicaid drug rebates.

The Comptroller of Public Accounts, Department of Public Safety, Texas Medical Board, Board of

Dental Examiners, Board of Pharmacy, and Board of Veterinary Medical Examiners indicate they could implement the provisions of the bill within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 515 Board of Pharmacy, 529 Health and Human Services Commission, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 578 Board of Veterinary Medical Examiners

LBB Staff: WP, AKi, EP, MDI, SGr, ESt, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 14, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2174 by Zerwas (Relating to controlled substance prescriptions and reimbursement for treatment for certain substance use disorders; authorizing a fee.), As Engrossed

Estimated Two-year Net Impact to General Revenue Related Funds for HB2174, As Engrossed: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2019
2020	(\$57,360)	\$57,360	1.0
2021	(\$57,360)	\$57,360	1.0
2022	(\$57,360)	\$57,360	1.0
2023	(\$57,360)	\$57,360	1.0
2024	(\$57,360)	\$57,360	1.0

Fiscal Analysis

The bill would amend the Government Code, Health and Safety Code, and Human Resources Code as they relate to controlled substance prescriptions under the Texas Controlled Substances Act.

The provisions of the bill would amend dispensing requirements related to controlled substances to require electronic prescriptions in certain circumstances and authorize written prescriptions and oral or telephonic communication of prescriptions by a prescriber or designated agent in certain circumstances.

The bill would authorize certain regulatory agencies to grant waivers to electronic prescribing of controlled substances for practitioners and would amend continuing education requirements related to opioid prescription limits.

Under the provisions of the bill, the limits on prescription drugs and medications under the medical assistance program would not apply to a prescription for an opioid for initial treatment of acute pain.

The bill would require the Health and Human Services Commission (HHSC) to provide medical assistance reimbursement for certain medication-assisted opioid or substance abuse disorder treatments without requiring prior authorization or precertification.

The bill would take effect September 1, 2019.

Methodology

Under the provisions of the bill, the Board of Nursing would be authorized to grant waivers to electronic prescribing of controlled substances for practitioners and would be required to amend continuing education requirements related to opioid prescription limits.

The agency indicates that to implement the provisions of the bill, it would develop a process for approving waivers, coordinate with other regulatory agencies to standardize the submission and approval of waivers, and would develop a new continuing education course and process for confirming licensees complete the course within the required time frame.

To implement the provisions of the bill, the Board of Nursing estimates that it would require an additional FTE and a cost of \$57,360 in General Revenue in fiscal year 2020 and each subsequent fiscal year. This analysis assumes that any increased cost to the Board of Nursing, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

This analysis assumes that any system modifications to the vendor drug claims processing system and other technology services can be absorbed within existing agency resources. HHSC indicates that requiring Medicaid reimbursement for medication-assisted opioid or substance use disorder treatment without requiring a prior authorization or pre-certification could result in a loss of supplemental Medicaid drug rebates.

The Comptroller of Public Accounts, Department of Public Safety, Texas Medical Board, Board of Dental Examiners, Board of Pharmacy, and Board of Veterinary Medical Examiners indicate they could implement the provisions of the bill within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 515 Board of Pharmacy, 529 Health and Human Services Commission, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 578 Board of Veterinary Medical Examiners

LBB Staff: WP, AKi, SGr, ESt, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 11, 2019

TO: Honorable Senfronia Thompson, Chair, House Committee on Public Health

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2174 by Zerwas (Relating to controlled substance prescriptions under the Texas Controlled Substances Act; authorizing a fee.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2174, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2019
2020	(\$57,360)	\$57,360	1.0
2021	(\$57,360)	\$57,360	1.0
2022	(\$57,360)	\$57,360	1.0
2023	(\$57,360)	\$57,360	1.0
2024	(\$57,360)	\$57,360	1.0

Fiscal Analysis

The bill would amend the Government Code, Health and Safety Code, and Human Resources Code as they relate to controlled substance prescriptions under the Texas Controlled Substances Act.

The provisions of the bill would amend dispensing requirements related to controlled substances to require electronic prescriptions in certain circumstances and authorize written prescriptions and oral or telephonic communication of prescriptions by a prescriber or designated agent in certain circumstances. The bill would authorize certain regulatory agencies to grant waivers to electronic prescribing of controlled substances for practitioners and would amend continuing education requirements related to opioid prescription limits. Under the provisions of the bill, the limits on prescription drugs and medications under the medical assistance program would not apply to a prescription for an opioid for initial treatment of acute pain.

Methodology

Under the provisions of the bill, the Board of Nursing would be authorized to grant waivers to electronic prescribing of controlled substances for practitioners and would be required to amend continuing education requirements related to opioid prescription limits.

The agency indicates that to implement the provisions of the bill, it would develop a process for approving waivers, coordinate with other regulatory agencies to standardize the submission and approval of waivers, and would develop a new continuing education course and process for confirming licensees complete the course within the required time frame.

To implement the provisions of the bill, the Board of Nursing estimates that it would require an additional FTE and a cost of \$57,360 in General Revenue in fiscal year 2020 and each subsequent fiscal year. This analysis assumes that any increased cost to the Board of Nursing, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

The Comptroller of Public Accounts, Department of Public Safety, Texas Medical Board, Board of Dental Examiners, Board of Pharmacy, Health and Human Services Commission, and Board of Veterinary Medical Examiners indicate they could implement the provisions of the bill within existing resources.

The estimated total to comply with the provisions of the bill would be \$57,360 in fiscal year 2020 and each subsequent fiscal year.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 405 Department of Public Safety, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 515 Board of Pharmacy, 529 Health and Human Services Commission, 578 Board of Veterinary Medical Examiners

LBB Staff: WP, AKi, SGr, ESt, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 19, 2019

TO: Honorable Senfronia Thompson, Chair, House Committee on Public Health

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2174 by Zerwas (Relating to controlled substance prescriptions under the Texas Controlled Substances Act; authorizing a fee.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2174, As Introduced: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$0
2021	\$0
2022	\$0
2023	\$0
2024	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees from FY 2019
2020	(\$57,360)	\$57,360	1.0
2021	(\$57,360)	\$57,360	1.0
2022	(\$57,360)	\$57,360	1.0
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Fiscal Analysis

The bill would amend the Government Code, Health and Safety Code, and Human Resources Code as they relate to controlled substance prescriptions under the Texas Controlled Substances Act.

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Methodology

Under the provisions of the bill, the Board of Nursing would be authorized to grant waivers to electronic prescribing of controlled substances for practitioners and would be required to amend continuing education requirements related to opioid prescription limits.

The agency indicates that to implement the provisions of the bill, it would develop a process for approving waivers, coordinate with other regulatory agencies to standardize the submission and approval of waivers, and would develop a new continuing education course and process for confirming licensees complete the course within the required time frame.

To implement the provisions of the bill, the Board of Nursing estimates that it would require an additional FTE and a cost of \$57,360 in General Revenue in fiscal year 2020 and each subsequent fiscal year. This analysis assumes that any increased cost to the Board of Nursing, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

The Comptroller of Public Accounts, Department of Public Safety, Texas Medical Board, Board of Dental Examiners, Board of Pharmacy, Health and Human Services Commission, and Board of Veterinary Medical Examiners indicate they could implement the provisions of the bill within existing resources.

The estimated total to comply with the provisions of the bill would be \$57,360 in fiscal year 2020 and each subsequent fiscal year.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 405 Department of Public Safety, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 515 Board of Pharmacy, 529 Health and Human Services Commission, 578 Board of Veterinary Medical Examiners

LBB Staff: WP, AKi, SGr, ESt, LCO